WP(C) 5204/2004
BEFORE

THE HON'BLE MR. JUSTICE B.K.SHARMA

Date of hearing and
Judgment and order - 20.02.2007

JUDGMENT AND ORDER (ORAL)

Heard Mr. S.K. Singh, learned counsel for the petitioner as well as Ms R. Chakraborty, learned State counsel representing the Respondents No.1 to 6. I have heard Mr. D. Das, learned counsel representing Mr. D. Baruah, learned Central Government Standing Counsel appearing on behalf of the Respondent No.7 i.e. the Accountant-General, Assam.

2. The grievance raised in this writ petition is in respect of non-payment of pensionary benefits to the petitioner, who is the wife of Late Banikanta Patowary.

3. Late Banikanta Patowary was appointed as Lower Division Assistant wayback in 1960 (i.e. 24.3.1960) under the Executive Engineer, Public Health Engineering, Dhubri Division, Dhubri. As per the statements made in the writ petition, he continued in service up to 10.9.1974 without any break. Thereafter, he had fallen sick and it is an admitted position that he remained absent from duty up to 17.12.1993.

4. It is because of the aforesaid absence from duty, the service of the late husband of the petitioner contains entry only up to 10.9.1974. The husband of the petitioner expired on 17.12.1993. Time to time representations made by the petitioner for granting pension and other retirement benefits having not yielded any result, the petitioner has approached this Court for a direction to the respondents to release the pensionary and other retirement benefits.

5. Although no counter affidavit has been filed by the State respondents as well as by the Accountant General, Assam, but the written instructions have been furnished to the respective counsel. As per the written instructions furnished by the Accountant General, Assam, although the petitioner's husband expired on 17.12.1993, but his Service Book contains entries up-to 10.9.1974. As noticed above, the husband of the petitioner was absent from duty for the period from 11.9.1974 to 17.12.1993 i.e. for more than 19 years. Referring to F.R. 18 and Rule 5 of the Leave Rules, it is the stand of the Accountant General that a Government servant remaining absent from duty with or without leave for more than 5 years forfeits his rights to service which also constitutes break in service under Rule 64 of the Assam Service and Pension Rules, 1969 and forfeits the past service to count towards pensionary benefits unless break in service is condoned by the Government by specific order.

6. It is the further stand that, according to the Assam Service and Pension Rules, the petitioner's husband shall be deemed to have resigned from service and consequently, the petitioner is not entitled to any pensionary and other retirement benefits.

7. As per the written instructions furnished to the learned State counsel by the Respondents No.1 to 6, the same very stand has been reiterated. It appears that the Service Book of the petiioner's husband along with pension papers were sent to the office of the Accountant General, Assam, but the same have been returned in view of the aforesaid stand of the Accountant General, Assam.

8. There is no dispute that the petitioner continued in his service from 24 .3.1960 to 10.9.1974 and thereafter, he remained absent from duty till he expire d on 17.12.1993. By Annexure-'C' communication dated 24.1.1984, the Government of Assam in the Health and Family Welfare (B) Department intimated the Chief Pu blic Health Engineer, Assam that the period of absence of the husband of the pet itioner till then should be regulated by granting him leave admissible to him an d that the period of absence for which the husband of the petitioner did not app ly for leave might be converted into extra-ordinary leave for which no leave sa lary would be admissible.

9. By Annexure-'D' letter dated 3.8.1999, the petitioner made a prayer to t he Chief Public Health Engineer, Assam for granting medical leave for the period of absence of her husband. By Annexure-'E' communication dated 30.11.1999 issu ed by the Executive Engineer (PHE), Dhubri addressed to the Chief Engineer (PHE) , Guwahati, the facts narrated above, were conveyed. It was also intimated that the petitioner's husband should be deemed to have resigned from his service in view of his long absence from duty. By the said communication, it was also int imated that although the pension case of the husband of the petitioner was sub mitted to the office of the Accountant General, Assam by letter dated 26.11.1998 , but the same was returned.

10. After the aforesaid development, the Additional Chief Engineer, Public H ealth Engineering by his order dated 4.8.2001 confirmed posthumously the service s of the husband of the petitioner as Upper Division Assistant, but such confirm ation was with effect from 1.9.1973. While endorsing a copy of the said order d ated 4.8.2001, the Executive Engineer, Public Health Engineering, Dhubri Divisio n was requested to process the pension case of the husband of the petitioner as per the Pension Rules. Certain documents were also sent to the said Executive Engineer. However, nothing having been communicated to the petitioner in this r egard, she made further representation to the Executive Engineer (PHE) Dhubri Di vision on 12.7.2002, but the same also having not yielded any result, she filed the writ petition.

11. Although it is the case of the respondents that the petitioner's husband should be deemed to have resigned from service after he remained absent from du ty for long 19 years, but no formal resignation was tendered by him. His servic e was also not dispensed with by the respondents till he expired on 17.12.1993. By Annexure-'C' letter dated 24th January, 1984, the Government of Assam in the Health and Family Welfare (B) Department addressed to the Chief Public Health E ngineer, Assam, the period of absence of the husband of the petitioner was direc ted to be regulated by granting him leave admissible to him. It was also indica ted that for the period for which the husband of the petitioner did not apply fo r leave, the said period should be converted into extra-ordinary leave for which no leave salary would be admissible.

12. It is the case of the petitioner that her husband had to remain absent from duty after 1974 i.e. 11.9.1974 due to his serious illness and eventually, h e died on 17.12.1993. However, the respondents have contended is that in view of the long absence of the husband of the petitioner from service, he is ceased to be a Government employee and should be deemed to have resigned from service. H owever, as noticed above, there is no formal resignation from his side and that there is also no formal dispensation of his service till he died on 17.12.1993.

13. In view of the above, the matter relating to payment of pension to the p etitioner shall be re-considered by the respondents in accordance with law. Thi s shall be done on or before 31st May, 2007. The result thereof shall be commu nicated to the petitioner. If any further information in the matter is required from the petitioner, the respondents shall communicate with the petitioner.

14. Writ petition is disposed of.